

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

STATE OF ALABAMA; and )  
MORRIS J. BROOKS, JR., Representative for )  
Alabama's 5th Congressional District, )

Plaintiffs, )

v. )

Civil Action No.  
2:18-cv-00772-RDP

UNITED STATES DEPARTMENT OF )  
COMMERCE; and WILBUR L. ROSS, in his )  
official capacity as Secretary of Commerce; )  
BUREAU OF THE CENSUS, an agency within the )  
United States Department of Commerce; and )  
STEVEN DILLINGHAM, in his capacity as )  
performing the non-exclusive functions and duties )  
of the Director of the U.S. Census Bureau, )

Defendants, )

and )

COUNTY OF SANTA CLARA, CALIFORNIA; )  
KING COUNTY, WASHINGTON; and CITY OF )  
JOSÉ, CALIFORNIA, )

DIANA MARTINEZ; RAISA SEQUEIRA; )  
SAULO CORONA; IRVING MEDINA; JOEY )  
CARDENAS; FLORINDA P. CHAVEZ; and )  
CHICANOS POR LA CAUSA, )

Intervenor-Defendants. )

**OPPOSED MOTION TO INTERVENE  
AND MEMORANDUM IN SUPPORT THEREOF**

Arlington County, Virginia and the City of Atlanta, Georgia (collectively, “Applicants”), by and through their undersigned counsel, hereby respectfully move for permissive intervention as defendants pursuant to Rule 24(b) of the Federal Rules of Civil Procedure or, in the alternative, to intervene as of right under Rule 24(a). As set forth in the Declaration of John Lewis, counsel for Applicants contacted counsel for the parties and have determined that Defendants, the Martinez Defendant-Intervenors, and the Local Government Defendant-Intervenors do not oppose the motion, but Plaintiffs do oppose it. *See* Ex. 1. Applicants, who are represented by the same counsel as the Local Government Defendant-Intervenors, intend to adopt and join their pleadings, and in accordance with Rule 24(c), attach their previously filed answer as Ex. 2.

In support of their motion, Applicants adopt the arguments presented by the Local Government Defendant-Intervenors in their motion to intervene and supporting memorandum. *See* Doc. 9. As is the case with the Local Government Defendant-Intervenors, the omission of undocumented persons from the 2020 Census threatens to diminish substantially the millions of dollars in Census-based federal funding that Applicants use to provide their residents with services. *See* Ex. 3, Declaration of Elizabeth Hardy; Ex. 4, Declaration of Nina Hickson. Thus, Applicants similarly have a stake in this action sufficient to warrant intervention.

Most importantly, Applicants are entitled to permissive intervention under Rule 24(b) for the same reasons the Court gave in permitting the Local Government Defendant-Intervenors to intervene. *See* Doc. 53. To start, Applicants’ motion is timely: Applicants filed this motion just weeks after the Court denied the federal government’s motion to dismiss, *see* Doc. 85, and the

case remains in the preliminary stages.<sup>1</sup> Moreover, Applicants will jointly file all applicable motions and briefs with the Local Government Defendant-Intervenors (so that the Court receives a single motion or brief from the local government parties on any given issue), and agree to be bound by all scheduling and procedural orders that apply to the Local Government Defendant-Intervenors. Thus, permitting Applicants to intervene “will not delay the adjudication of the litigants’ rights or the judicial process as ‘the court [has] yet to take significant action.’” Doc. 53 at 4 (quoting *Georgia v. U.S. Army Corps of Engineers*, 302 F.3d 1242, 1259-60 (11th Cir. 2002)). In contrast, Applicants “have a personal stake in the outcome of this litigation, such that they would be prejudiced if intervention was not permitted.” *Id.* at 6. Applicants “also satisfy the commonality standard required by Rule 24(b),” because Applicants “argue that the Residence Rule is lawful under both the Constitution and the APA” and thereby “intend to submit *identical* questions of fact and law with the main action.” *Id.* Thus, Applicants are entitled to permissive intervention.

In the alternative, Applicants are entitled to intervene as of right under Rule 24(a)(2). For the reasons described in the Local Government Defendant-Intervenors’ motion to intervene, Applicants have substantial interests in the subject of this action which may be impeded or impaired by a decision in this suit and which are not adequately represented by the federal government or the State of Alabama. *Compare* Ex. 3, Hardy Decl. *and* Ex. 4, Hickson Decl. *with* Doc. 9, at 7-17. However, the Court “need not address whether the Proposed Defendant-

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<sup>1</sup> In their reply in support of intervention, the Local Government Defendant-Intervenors noted that Applicants might also seek to intervene if intervention were granted. Doc. 17, at 2 n.2. So as not to disrupt the Court’s resolution of the federal government’s motion to dismiss and to avoid motions practice that might prove to be unnecessary were the Court to grant the motion, Applicants elected to wait until the Court decided the motion before moving to intervene.

Intervenors may intervene as a matter of right under Rule 24(a)” if it concludes that permissive intervention is appropriate. Doc. 53, at 3.

Thus, Applicants respectfully request entry of an Order granting permissive intervention under Rule 24(b) or, in the alternative, granting intervention as of right under Rule 24(a) and have attached a proposed order for the Court’s convenience. *See* Ex. 5, [Proposed] Order.

Dated: August 12, 2019

Respectfully submitted,

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